

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
(Tiburon, California)

BLUE & GOLD INVESTMENTS, INC.
d/b/a BOARDWALK MARKET 1/

Employer-Petitioner

and

UNITED FOOD AND COMMERCIAL WORKERS
UNION, LOCAL 101, AFL-CIO 2/

Union

20-RM-2854

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board; hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, 3/ the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed. 4/
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein. 5/
3. The labor organization(s) involved claim(s) to represent certain employees of the Employer. 6/
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act. 7/
5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act: 8/

All full-time and regular part-time journeymen and apprentice grocery clerks employed by the Employer at its Tiburon, California facility; excluding all meat department employees, butchers, deli employees, administrative employees, guards and supervisors 9/ as defined in the Act.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit(s) found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit(s) who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained

(OVER)

their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by **UNITED FOOD AND COMMERCIAL WORKERS UNION LOCAL 101, AFL-CIO**.

LIST OF VOTERS

In order to insure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. **Excelsior Underwear, Inc.**, 156 NLRB 1236 (1966); **NLRB. Wyman-Gordan Company**, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within 7 days of the date of this Decision 3 copies of an election eligibility list, containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned who shall make the list available to all parties to the election. **North Macon Health Care Facility**, 315 NLRB No. 50 (1994). In order to be timely filed, such list must be received in the Regional Office, 901 Market Street, Suite 400, San Francisco, California 94103, on or before January 28, 2005. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the **Executive Secretary, 1099-14th Street, NW, Washington, DC 20570-0001**. This request must be received by the Board in Washington by February 4, 2005.

Dated January 21, 2005

at San Francisco, California

/s/ Robert H. Miller

Regional Director, Region 20

- 1/ The Employer-Petitioner's name appears as amended at the hearing.
- 2/ I have taken administrative notice of the fact that the Union is a member of the AFL-CIO and have amended the name of the Union accordingly.
- 3/ I take administrative notice of and include in the record as Board Exhibit 2, a copy of the telecopy transmission cover page sent by facsimile transmission, along with a copy of the Petition and Notice of Hearing in the instant case, to Union Attorney David Rosenfeld on January 6, 2005. I also take administrative notice of and include in the record as Board Exhibit 3, a letter from Attorney Rosenfeld dated January 12, 2005, notifying the Regional office that he represents the Union in this matter.
- 4/ The hearing in this case was held on January 11, 2005. No representative of the Union appeared at the hearing. The record reflects that the Union was served with the Petition and Notice of Hearing by first-class mail and by facsimile transmission on January 4, 2005. As indicated above, the record also reflects that the Union's attorney was served with a copy of the Petition and Notice of Hearing on January 6, 2005. In these circumstances, I find that the decision of the hearing officer to proceed with the hearing in the absence of a representative of the Union did not constitute prejudicial error.
- 5/ The record reflects that the Employer, a California corporation with an office and place of business in Tiburon, California, is engaged in the retail grocery business. The record further reflects that during the calendar year ending December 31, 2004, the Employer-Petitioner derived gross revenues in excess of \$500,000 and purchased goods valued in excess of \$2,500 which originated from points located outside the State of California. In these circumstances, I find that the Employer-Petitioner is engaged in commerce and that it will effectuate the policies of the Act to assert jurisdiction in this case.
- 6/ The record reflects that the Union is an organization in which employees participate and which represents employees in the handling of collective-bargaining negotiations with their employers and in the processing of grievances on behalf of employees. The record also discloses that the Union and the Employer-Petitioner were parties to a Letter of Understanding, under which the Employer-Petitioner agreed to be bound by the terms of the Master Food Store Contract between several local unions, including the Union, and several large chain grocery stores. The Letter of Understanding and the Master Food Store Contract, collectively herein called the Agreement, were effective for the period from September 2, 2001, through September 11, 2004, and covered the terms and conditions of employment for the Employer-Petitioner's employees. Based on such evidence, I find that the Union is a labor organization within the meaning of the Act.
- 7/ As indicated above, the Agreement expired by its terms on September 11, 2004. By letter dated June 10, 2004, the Employer-Petitioner gave the Union timely notice of its intent to terminate the Agreement and to bargain with the Union on a single employer basis for a new

agreement. The record reflects, however, that no new agreement had been reached as of the date of the hearing. In these circumstances, I find that no contract exists to bar the processing of the petition in this matter.

- 8/ The record discloses that since 1985, the Employer-Petitioner and the Union have been parties to a series of collective-bargaining agreements, the most recent of which is the Agreement. The bargaining unit covered under the Agreement includes all full-time and regular part-time grocery employees, including journeymen and apprentices. The Board has long held that the appropriate unit in an RM election must be coextensive with the certified or recognized unit. *K. Van Bourgondien & Sons*, 294 NLRB 268 (1989); *Comtel*, 305 NLRB 287 (1991); *Standard Brands*, 214 NLRB 72 (1974). Accordingly, as the unit sought herein is coextensive with that described in the Agreement, I find that it is an appropriate unit. There are about thirteen employees in the bargaining unit.
- 9/ The record establishes, and I find, Produce Manager Todd Bella and Grocery Manager Tony Lopez, each possess the authority to hire and fire employees. Therefore, I find that Grocery Manager Lopez and Produce Manager Bella are each a supervisor within the meaning of Section 2(11) of the Act and exclude them from the unit.